

Misconduct & Discipline: Introduction

■ GOALS OF THIS PRESENTATION:

- **Highlight** the concepts of misconduct and discipline (NOT in-depth studies)
- **Underscore** related supervisory and managerial responsibilities
- Identify **when** you need to get help.... and **where** to get it



Misconduct & Discipline: Introduction

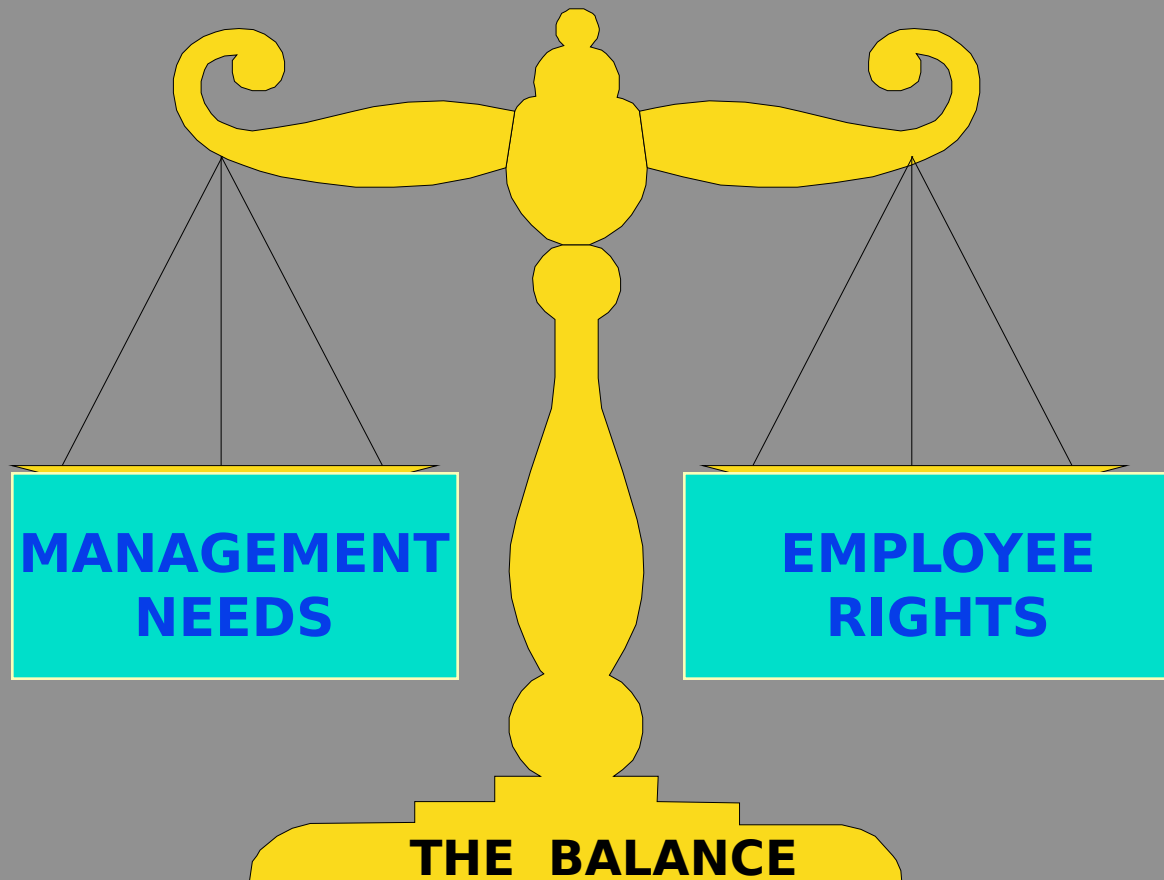
■ Role of Employee Relations

- Guide and Assist Management
 - » leave & attendance
 - » misconduct
 - » performance management
 - » grievance process
 - » appeals process
- Assist Management with preparation of Disciplinary & Adverse Action Notices
- Advise Employees of Rights & Entitlements



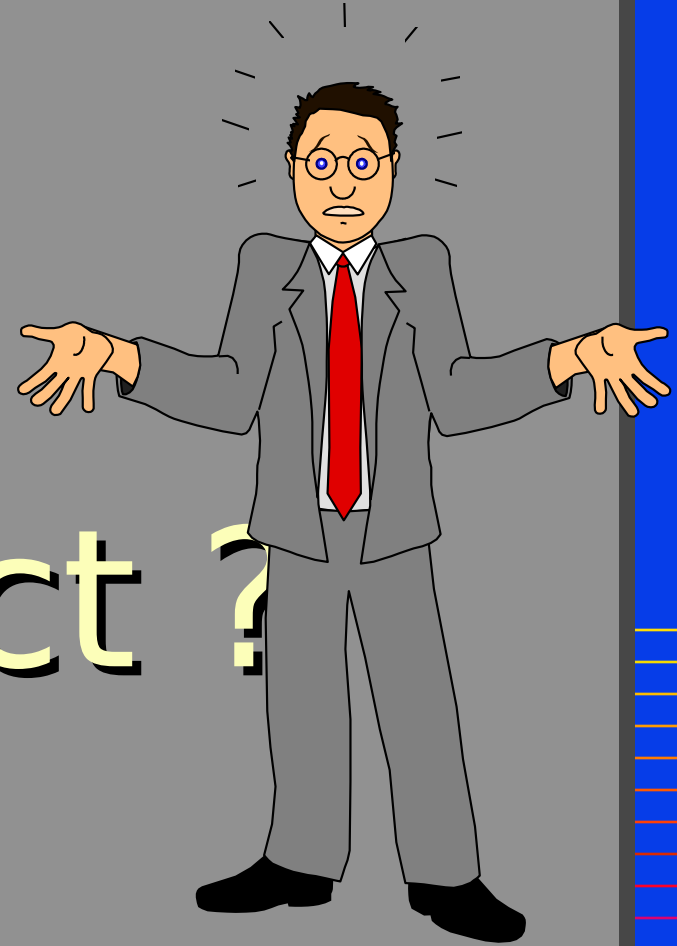
Misconduct & Discipline: Introduction

■ Role of Employee Relations



Misconduct & Discipline: The Basics

What is
Misconduct ?



Misconduct & Discipline: The Basics

Misconduct

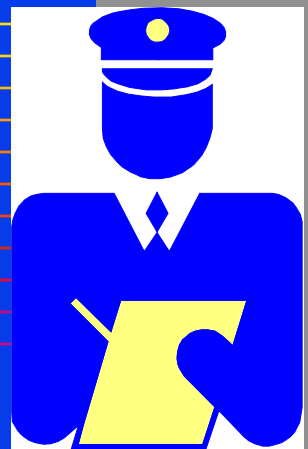
- Violation of Employment Expectations
- Failure to follow law, rule, regulation, policy, directive, instruction, or order
- Conscious; deliberate; within employee's control



Misconduct & Discipline: The Basics

Awareness

- Expectations, Requirements, Rules, Policies
- Supervisory / Managerial Responsibility
- How does the employee know what is / isn't acceptable?



Misconduct & Discipline: The Basics



Misconduct
or Poor
Performance
?

Misconduct & Discipline: The Basics

Misconduct

- Violation of Employment Expectations
- Failure to follow law, rule, regulation, policy, directive, instruction, or order
- Conscious; deliberate; within employee's control



Misconduct & Discipline: The Basics

Poor Performance

- Failure to adequately perform the assigned duties and responsibilities
- Failure to perform work at an acceptable level:
 - quality
 - quantity
 - timeliness



Misconduct & Discipline: The Basics

Misconduct and Poor Performance

- Usually easy to identify and categorize
- Occasional overlap
- Employee Relations will help you
- Performance Management Training Session (separate)



Misconduct & Discipline: The Basics

■ MISCONDUCT

- 5 CFR 752
- Progressive, or
- Sequential
- Preponderance of Evidence

■ PERFORMANCE

- 5 CFR 432
- Opportunity to Improve
- AKA: Performance Improvement Period
- Substantial Evidence

Misconduct & Discipline: The Basics

Discipline



- a tool for management to use to maintain an effective, efficient, and orderly workplace
- the way Federal sector supervisors must deal with employee misconduct

Misconduct & Discipline: The Basics

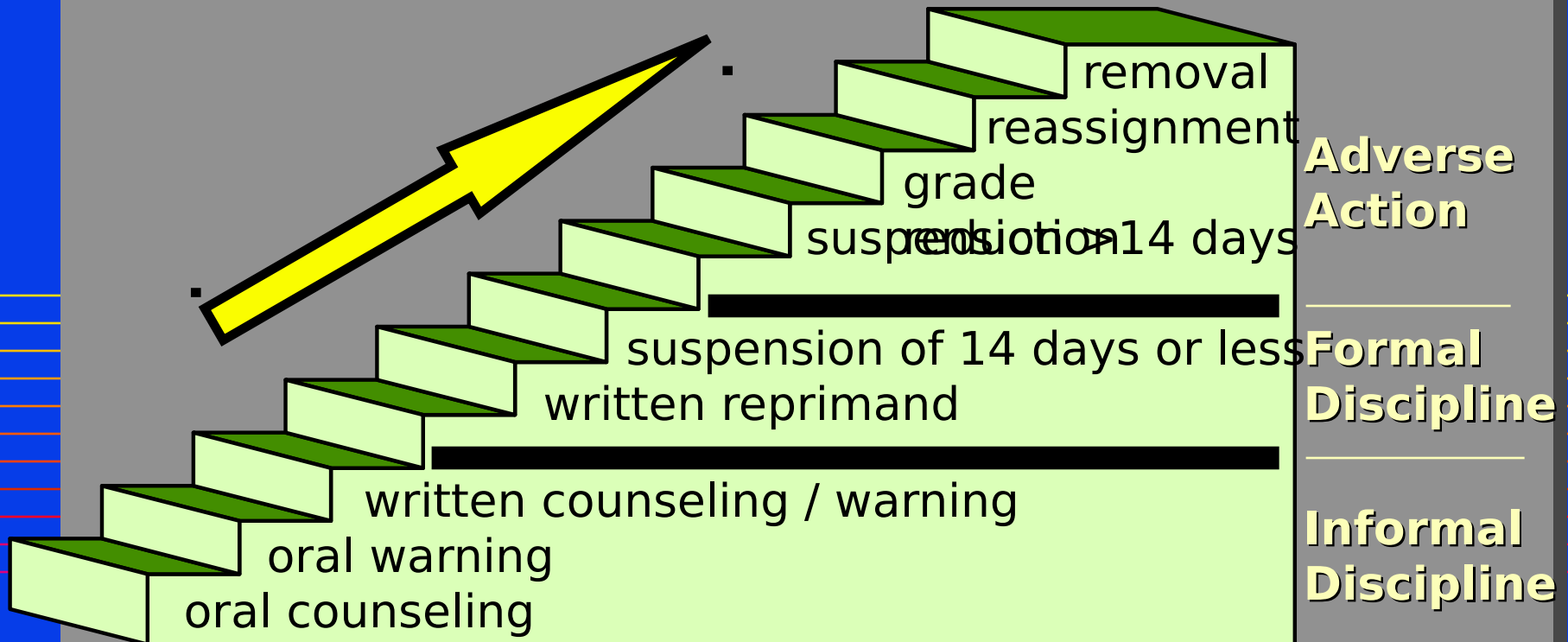
Discipline is:

- used by supervisors to resolve the misconduct
- **Corrective** in nature
- generally, **Progressive**



Misconduct & Discipline: The Basics

Progressive Discipline



Misconduct & Discipline



The Basics - Key Points

- Misconduct Vs Performance
- Supervisor's Responsibility
- Discipline is Progressive
- Discipline is Corrective
- Employee Relations Assists

Misconduct & Discipline: The Facts

■ Evidence

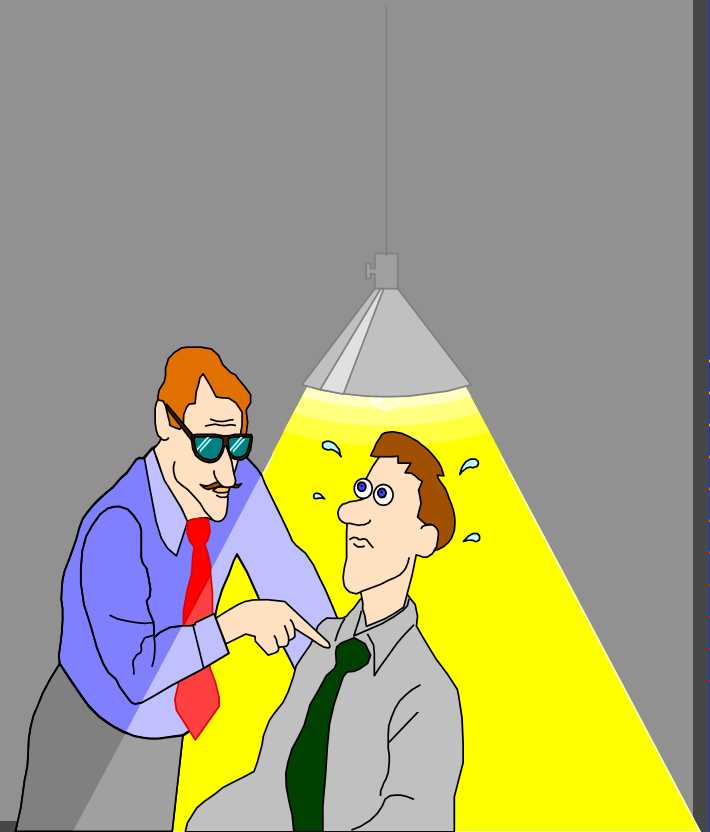
- Prerequisite for Disciplinary Action
- Must prove employee engaged in misconduct



Misconduct & Discipline: The Facts

■ Developing Evidence

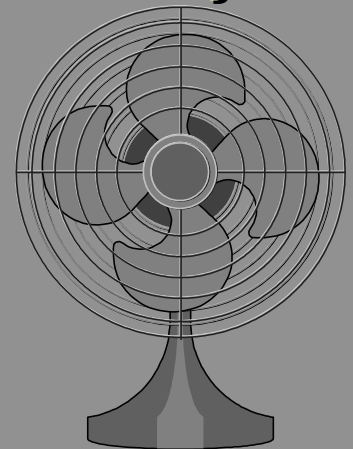
- Employee comments / statements
- Personal observation
- Interviews with others
- Police / IG Reports
- **Misconduct / Incident**
Employee Relations
can help you



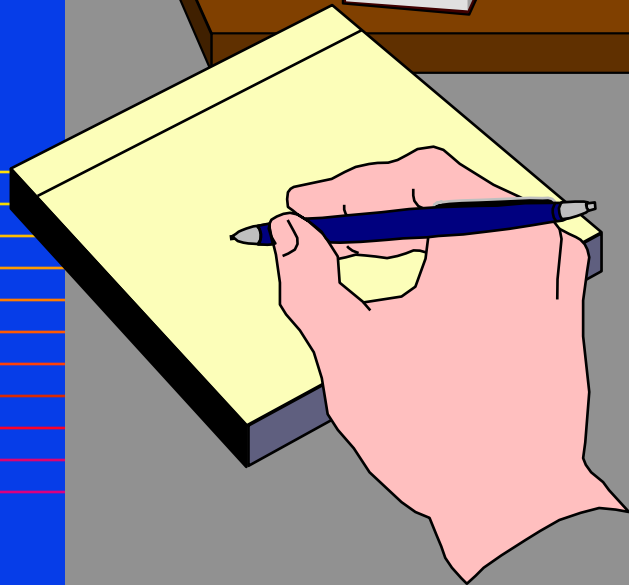
Misconduct & Discipline: The Facts

■ Developing Evidence **CAUTION !!!**

- Be cool, objective, and thorough
- Remember *Dragnet's* Joe Friday
- Don't develop opinions



Misconduct & Discipline: The Facts



DOCUMENTATION
DOCUMENTATION
DOCUMENTATION

Misconduct & Discipline: The Facts

- Evidence / Documentation
- “The Bottom Line”
 - Preponderance of the evidence
 - More likely true than not true

Misconduct & Discipline: The Facts



■ Evidence / Documentation

- Does it support
 - » violation ?
 - » awareness ?
- If so, it's safe to proceed

Misconduct & Discipline: Penalty Selection



Misconduct & Discipline: Penalty Selection

Probationary Employees who engage in misconduct

- Counsel / Notice of Warning - MAYBE
- If no improvement,
TERMINATE appointment
- Complete action **BEFORE** the end of the Probationary Period
 - Competitive Service = 1 year
 - Excepted Service = 2 years

Misconduct & Discipline: Penalty Selection

■ “Douglas Factors”

(Douglas Vs VA, 5 MSPB 313, 1981)

- Nature / seriousness of offense
 - › job nexus (especially off-duty)
 - › intentional, technical, or inadvertent
 - › malicious or for gain
 - › frequently repeated



Misconduct & Discipline: Penalty Selection

■ “Douglas Factors” (continued)

- Nature of job
 - » supervisory / fiduciary
 - » public contact
 - » prominence of position
- Past disciplinary record



Misconduct & Discipline: Penalty Selection

■ “Douglas Factors” (continued)

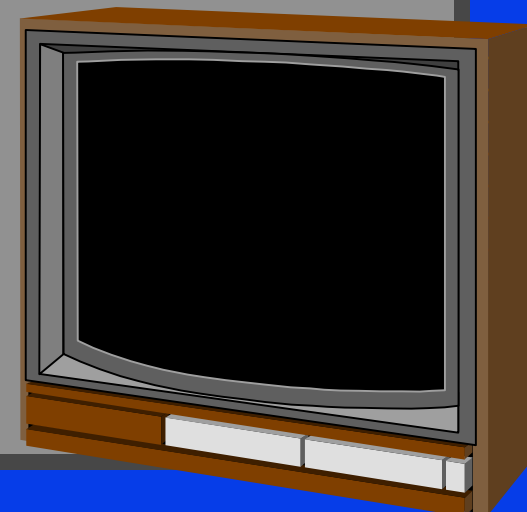
- Past work record
 - › length of service
 - › performance & dependability
 - › ability to get along with coworkers
- Effect of offense on
 - › ability to satisfactorily perform job
 - › supervisor’s confidence & trust



Misconduct & Discipline: Penalty Selection

■ “Douglas Factors” (continued)

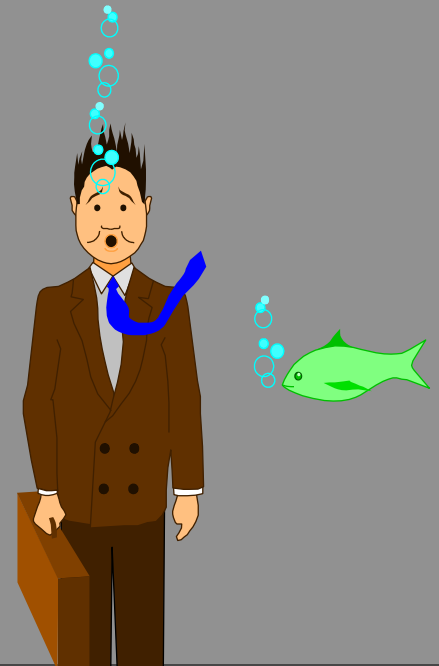
- Consistency of Penalty with others imposed for same / similar offenses
- Consistency with Agency’s Table of Penalties (AR 690-700)
- Notoriety of offense
 - » impact on agency’s reputation



Misconduct & Discipline: Penalty Selection

■ “Douglas Factors” (continued)

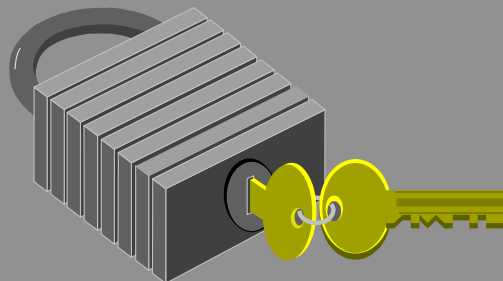
- Prior notice of rules / warning
- Mitigating circumstances
- Adequacy & effectiveness of alternative sanctions



Misconduct & Discipline: Penalty Selection

■ Other Practical Considerations

- Impact on others?
- Likelihood of recurrence?
- Employee's response / attitude?
- Does the penalty fit the offense?



Misconduct & Discipline: Penalty Selection

■ NOTE:

Supervisors and fact-finders should also keep the Douglas Factors in mind when developing the FACTS of a case

- Helps structure fact-finding
- Clarifies issues “up front”
- Reduces need to gather supplemental information



Misconduct & Discipline: Penalty Selection

■ The “Cause” Standard

- Clearly specify charge(s)
- Prove specified charge(s)
- Show **nexus** between charge(s) and promotion of the efficiency of the service, especially for off-duty misconduct
- Show appropriateness of penalty



Misconduct & Discipline: Penalty Selection

Dealing with
misconduct -
specific
situations



Exercise
MD-5

Misconduct & Discipline: Implementation

■ Written Reprimand

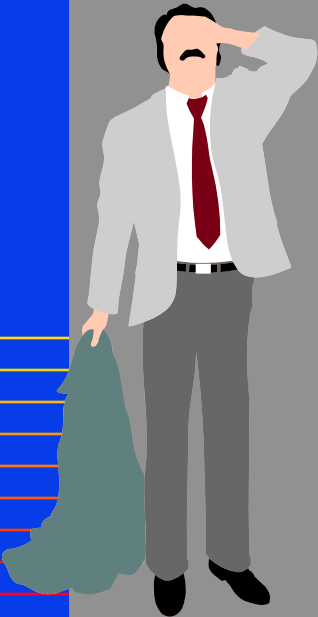
- One-step action
- Supervisors assisted by Employee Relations



Misconduct & Discipline: Implementation

■ Suspensions (14 days or less)

- Two-step process
- Notice of Proposed Suspension*
- Employee response to Deciding Official
 - » normally 10 calendar days
- Notice of Decision by Deciding Official*
- Action effected (?)



*Employee Relations Assists

Misconduct & Discipline: Implementation

- Suspensions (more than 14 days), Removals, Reductions in Grade/Pay, Furloughs (30 days or less)
 - Two-step process
 - First Line Supervisor
 - Notice of Proposed Action*

*Employee Relations Assists

Misconduct & Discipline: Implementation

- Suspensions (more than 14 days),
Removals, Reductions in Grade/Pay,
Furloughs (30 days or less) - *continued*
 - Second line Supervisor acts as Deciding Official
 - Employee response to Deciding Official
 - » normally 14 calendar days
 - Notice of Decision by Deciding Official*
 - Action effected (?)

*Employee Relations
Assists,

Misconduct & Discipline: Implementation

■ Notices and Decisions

- State employee rights
- State next step in the process

■ Writing Notices and Decisions*

- Plain English
- Simple and factual
- As brief as possible



*Employee Relations Drafts

Misconduct & Discipline: Implementation

■ Employee's Response

- Orally and / or in writing
- Reasonable amount of official time
 - › review materials
 - › prepare response
 - › obtain affidavits
 - › reply to Deciding Official
- Right to representation



Misconduct & Discipline: Challenges

■ Adverse Actions



- Appeal to the Merit Systems Protection Board (MSPB)
- Filed within 30 days following effective date
- Right to request hearing
- Does not stay the action
- EEO Complaint

Misconduct & Discipline: Challenges

■ MSPB Appeal

Quasi-judicial proceeding



- Decision by Administrative Judge (AJ)
 - May be appealed to “Full Board”
 - » accepts (sustains, reverses or modifies)
 - » rejects or remands
 - Final administrative decision
 - » Courts are next step

Misconduct & Discipline: Challenges



MYTH: It's far too difficult to take an adverse action against a Federal employee.

Misconduct & Discipline: Other Related Matters

■ Crime Provision



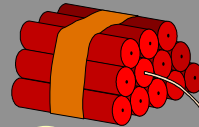
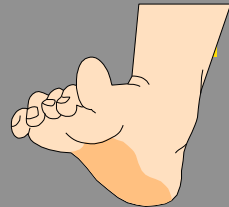
- exception to 30 day advance notice of adverse action
- reasonable belief of crime that may result in imprisonment
- 7-day response period
- may be in paid, non-duty status
- indefinite suspension or removal



Misconduct & Discipline: Other Related Matters

Common Errors in Discipline

- Allowing Problems to Continue
- Failure to Communicate Rules and Requirements (**awareness**)
- Inconsistent Enforcement



Misconduct & Discipline: Other Related Matters

■ **Common Errors in Discipline** - continued

- Transferring the Problem
- Non-Douglas Reasons
- Incomplete Investigation / Facts
- Inconsistent Penalties
- Trying to “go it alone”

